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9	BEFORE THE		
10	BOARD OF REGISTERED NURSING DEPARTMENT OF CONSUMER AFFAIRS		
	STATE OF CAL		
11		2227	
12	In the Matter of the Accusation Against:	Case No. 2009-193	
13	MICHAEL WARREN, a.k.a. MICHAEL JOSEPH WARREN	ACCUSATION	
14	313 Princeton Avenue	ACCUSATION	
15	Bayville, New Jersey 08721		
16	Registered Nurse License No. 636101		
	Respondent.		
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18	Complainant alleges:		
19	<u>PARTIES</u>		
20.	1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation		
21	solely in her official capacity as the Executive Officer of the Board of Registered Nursing		
22	("Board"), Department of Consumer Affairs.	• .	
23	2. On or about April 13, 2004, the	ne Board issued Registered Nurse License	
24	Number 636101 to Michael Warren, also known as Michael Joseph Warren ("Respondent").		
25	Respondent's registered nurse license was in full force and effect at all times relevant to the		
26	charges brought herein and will expire on June 30, 2009, unless renewed.		
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STATUTORY AND REGULATORY PROVISIONS

- 3. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

 4. Code section 2764 provides, in pertinent part, that the expiration of a
- 4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.
 - 5. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct . . .

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof...

6. Code section 2762 states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

- (b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.
- (c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof...

7. Code section 2765 states:

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a registered nurse is deemed to be a conviction within the meaning of this article. The board may order the license or certificate suspended or revoked, or may decline to issue a license or certificate, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

8. Code section 4022 states:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

- (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.
- (b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.
- (c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.
 - 9. California Code of Regulations, title 16, section 1444 states, in pertinent

part:

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A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare . . .

COST RECOVERY

10. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

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CONTROLLED SUBSTANCES AND DANGEROUS DRUGS AT ISSUE

- 11. "Provigil", a trade name for modafinil, is a Schedule IV controlled substance as designated by Health and Safety Code section 11057, subdivision (f)(3).
- 12. "Effexor" is a dangerous drug within the meaning of Code section 4022 in that it requires a prescription under federal law.
- 13. "Klonopin," a brand of clonazepam, is a Schedule IV controlled substance as designated by Health and Safety Code section 11057, subdivision (d)(7).
- 14. "Benzodiazopine" is a generic classification for drugs consisting of Schedule IV controlled substances and dangerous drugs within the meaning of Business and Professions Code section 4022 (drugs requiring a prescription under federal law).

FIRST CAUSE FOR DISCIPLINE

(Criminal Conviction)

- 15. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (f), in that on or about December 9, 2008, in the criminal proceeding titled *People v. Michael Joseph Warren* (Super. Ct. Stanislaus County, 2008, Case No. 1233967), Respondent pled guilty to violating Vehicle Code section 23152, subdivision (a) (driving while under the influence of alcohol and/or drugs, a misdemeanor), a crime substantially related to the qualifications, functions, and duties of a registered nurse. Respondent was also charged with violating Code section 4140 (possession of a needle/syringe), but that charge was dismissed in view of Respondent's plea, as set forth above.
- The circumstances of the crime are as follows: On or about August 17, 2007, an officer with the Oakdale Police Department was notified of a DUI collision at 7:28 a.m. The officer contacted Respondent at the scene and observed that he was unsteady on his feet, his eyes were glassy and red, his speech was slow, and he seemed confused. Respondent told the officer that he takes several prescription medications including Provigil, Effexor, Klonopin, and "some type of benzodiazapene". Respondent stated that he was supposed to be going back to work (Respondent was wearing scrubs and had an identification card for Doctor's Medical Center in Modesto). The officer searched Respondent's vehicle and located a 3 mm syringe in a

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sealed package. Respondent admitted to the officer that he had taken some prescription medications. The officer later observed that Respondent had a puncture mark with dried blood on each of his arms.

SECOND CAUSE FOR DISCIPLINE

(Use of Alcoholic Beverages, Controlled Substances, and/or Dangerous Drugs to an Extent or in a Manner Dangerous or Injurious to Oneself or Others)

17. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762, subdivision (b), in that on or about August 17, 2007, Respondent used controlled substances, including, but not limited to, Provigil and Klonopin, dangerous drugs, including, but not limited to, Effexor, and/or consumed alcoholic beverages to an extent or in a manner dangerous or injurious to himself and others, as set forth in paragraphs 15 and 16 above.

THIRD CAUSE FOR DISCIPLINE

(Conviction Related to Self-Administration of Controlled Substances and Dangerous Drugs, and Consumption of Alcoholic Beverages)

18. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762, subdivision (c), in that on or about December 9, 2008, Respondent was convicted of a criminal offense involving the prescription, consumption and/or self-administration of controlled substances and/or dangerous drugs and/or the consumption of alcoholic beverages, as set forth in paragraph 15 above.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- 1. Revoking or suspending Registered Nurse License Number 636101, issued to Michael Warren, also known as Michael Joseph Warren;
 - 2. Ordering Michael Warren, also known as Michael Joseph Warren, to pay

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1,	the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this		
2	case, pursuant to Business and Professions Code section 125.3;		
3	3. Taking such other and further action as deemed necessary and proper.		
5	DATED: 3(5)09		
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7	RUTH ANN TERRY, M.P.H., R.N.		
8	Executive Officer Board of Registered Nursing		
9	Department of Consumer Affairs State of California		
11	Complainant		
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